U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 0 4 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a technical software solution provider. It seeks to employ the beneficiary permanently in the United States as a computer software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the job offer portion of the Form ETA 750, Application for Alien Employment Certification (labor certification), did not require an advanced degree professional because only four years of college were required in Box 14. The director denied the petition accordingly.

The AAO issued a Notice of Intent to Dismiss (NOID) on January 29, 2013 concerning the actual minimum educational requirements of the offered position.[1] The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. master's degree. The AAO also noted that the Form ETA 750 does not require an advanced degree professional for two reasons. First, as noted by the director, the Form ETA 750 only requires four years of college, which indicates that a U.S. bachelor's degree level of education is the minimum education requirement. Second, the actual degree requirement--a Masters of Computer Management--is a foreign degree which is in fact comparable to a U.S. bachelor's degree. Therefore, the labor certification requires a U.S. bachelor's degree equivalent in terms of years of education and type of degree.

This office allowed the petitioner 30 days in which to respond to the NOID. In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID could result in dismissal of the appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). More than 30 days have passed and the petitioner has failed to respond with proof that the beneficiary possessed the required education for the offered position.

Thus, the appeal will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).